

JUDGE WOODS

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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District: Southern District of N.Y.
Name (under which you were convicted): Ramon Gutierrez		Docket or Case No.:
Place of Confinement: Green Haven Corr. Fac.	Prisoner No.: 09-A-3702	
Petitioner (include the name under which you were convicted) Ramon Gutierrez	Respondent (authorized person having custody of petitioner) v. Jamie LaManna, Superintendent Green Haven C.F., et. al.	
The Attorney General of the State of: New York (Leticia James)		

## PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

County Court, Albany CountyAlbany County Judicial Center, Albany, N.Y. 12207(b) Criminal docket or case number (if you know): 2-7087

2. (a) Date of the judgment of conviction (if you know):
- 9/2002

(b) Date of sentencing: 11/2002

3. Length of sentence:
- 22 years to life

4. In this case, were you convicted on more than one count or of more than one crime?
- ☒
- Yes
- ☐
- No

5. Identify all crimes of which you were convicted and sentenced in this case:
- Criminal Sale of a
- 
- Controlled Substance in the 1st Degree and Criminal Possession
- 
- of a Controlled Substance in the 1st degree

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)

☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

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(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury    ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes    ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes    ☒ No

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

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(g) Did you seek further review by a higher state court?    ☐ Yes    ☒ No

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

\_\_\_\_\_

(4) Date of result (if you know): N/A

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If yes, answer the following:

(1) Docket or case number (if you know): N/A(2) Result: N/A(3) Date of result (if you know): N/A(4) Citation to the case (if you know): N/A10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: County Court, Albany County(2) Docket or case number (if you know): 2-7087(3) Date of filing (if you know): 4/2016(4) Nature of the proceeding: Motion to Vacate Judgement(5) Grounds raised: The state court lacked jurisdiction over the  
Petitioner because the forceful abduction of the Peti-  
tioner violated the extradition treaty.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: Denied(8) Date of result (if you know):

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(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: N/A

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** The Petitioner's forceful abduction, after the Dominican Republic authorized his extradition constituted a treaty violation.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\*\*\* See attached page 6a \*\*\*

(b) If you did not exhaust your state remedies on Ground One, explain why: The State Court ruled that the alleged treaty violation must be brought in a federal court.

PETITIONER'S FORCEFUL ABDUCTION AFTER THE  
DOMINICAN REPUBLIC AUTHORIZED HIS EXTRADITION  
CONSTITUTED A TREATY VIOLATION.

On October 29, 2008, Dominican authorities arrested the Petitioner on an extradition warrant. The Petitioner challenged his extradition in court. The Court ruled the United States extradition request was valid, but ordered the United States to lower the already imposed 22 years to life sentence; because the law of the Dominican Republic forbids extradition of Dominican nationals to serve more than 30 years. In good faith, the Dominican authorities held the Petitioner in custody to give the U.S. time to change the sentence. The U.S. refused.

The Petitioner filed a writ of habeas corpus to be released from custody and another Dominican court gave the United States an additional 30 day good faith extension to change the sentence. However, two weeks after the court granted the second extension, three U.S. marshals entered the Dominican Republic and kidnapped the Petitioner and handed him over to New York State to serve his life sentence. (See attached Memorandum of Law).

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(Rev. 01/15)(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No(2) If you did not raise this issue in your direct appeal, explain why: I was sentenced in  
absentia. I was kidnapped and returned to custody six years  
later and the time to appeal expired.(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion to Vacate JudgmentName and location of the court where the motion or petition was filed: County Court, Albany  
County, Albany Judicial Center, Albany N.Y. 12207Docket or case number (if you know): 2-7087Date of the court's decision: Not sureResult (attach a copy of the court's opinion or order, if available): Denied(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Leave to Appeal DeniedDocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: I filed a state Habeas Corpus and several Grievances with the Department of Corrections requesting to be released from custody.

**GROUND TWO:** Immigration and customs agents should have ordered me back to the Port of entry

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Immigration and customs enforcement tried to deport me after I began serving my sentence. During those proceedings they learned of the kidnapping and terminated the proceedings. However, because my status in this country is like being detained at the border, they should have returned me to the border and repatriated me.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_



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Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

\_\_\_\_\_

\_\_\_\_\_

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

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### GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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\_\_\_\_\_  
\_\_\_\_\_(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? \_\_\_\_\_

☐ Yes☐ No(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? \_\_\_\_\_

☐ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? \_\_\_\_\_

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition? \_\_\_\_\_

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? \_\_\_\_\_

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

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**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) If you did not exhaust your state remedies on Ground Four, explain why:

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(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

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(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

☐ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground two is an immigration issue and has been appeal to the Board of Immigration Appeals.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Unknown

(b) At arraignment and plea: Unknown

(c) At trial: Castillo Gaspar (Disbarred)

(d) At sentencing: Gaspar

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

There is no appeal process to challenge the Petitioner's kidnapping. And as a result of the forceful abduction of the Petitioner, he has been in perpetual custody of the Immigration and Customs Enforcement, thus his status in this country is as if he is stuck at the border.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

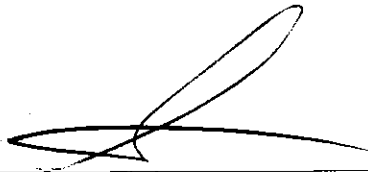
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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: To be released from custody.

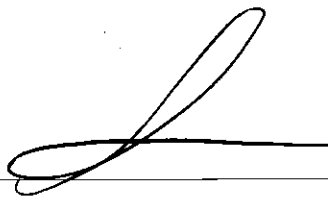
or any other relief to which petitioner may be entitled.



Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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